

REMARKS

In the Restriction Requirement mailed November 29, 2005, the Office restricted the claims to one of the following inventions under 35 U.S.C. 121:

Species 1: embodiment 1, paragraph [0016] on page 5 of present specification;
Species 2: embodiment 2, paragraph [0017] on page 5 of present specification;
Species 3: embodiment 3, paragraph [0018] on page 6 of present specification;
Species 4: embodiment 4, paragraph [0019] on page 6 of present specification;
Species 5: embodiment 5, paragraph [0021] on page 7 of present specification;
Species 6: embodiment 6, paragraph [0022].

The Applicant respectfully submits that the Restriction Requirement has not followed the mandate of M.P.E.P. § 806.04(b), which states, in part:

Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those covered in MPEP § 806.05 - § 806.05(i). If restriction is improper under either practice, it should not be required.

The analysis requires two criteria for a proper restriction: (A) the inventions must be independent or distinct, and (B) there must be a serious burden on the examiner.

First, it should be noted that many of the elements and/or components recited in the independent claims may be found in the same class, such that the classification for the claimed embodiments should be the same. They should have no separate status in the art, and no different field of search should be required.

Second, no indication has been given in the Requirement as to a reason for separate classification, status, or field of search. Since the classification for the claimed embodiments should be the same, since they appear to have no separate status in the art, since a different field

of search should not be required, and since there is no evidence in the record to indicate otherwise, it is respectfully asserted that a *prima facie* case for restriction has not been established. Therefore it is respectfully requested that the Restriction Requirement be reconsidered and withdrawn.

CONCLUSION

As the analysis providing a proper reason for restriction has not yet been provided, the Applicant provisionally elects, with traverse, Species 4. The corresponding elected claims include claims 1-5, 12-17, and 40-43. If the remaining claims should be withdrawn, the Applicant respectfully reserves the right to reintroduce these claims into this Application, or into one or more Divisional applications at a later date.

The Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the Applicant's attorney Mark V. Muller at (210) 308-5677, or the undersigned at (612) 371-2103 to facilitate prosecution of this Application. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date December 26, 2005 By Mark V. Muller
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 29 day of December, 2005.

Name

Patricia A. Hultman

Signature

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